IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

L P A No. 407 of 2004

in

Writ Petition No. 4873 of l996

Kum Sangita D Randive... appellant

vs

Mah State Elec Board and ors ..respondents

Mr.Bhavesh Parmar for appellant

Ms Deepa Chavan for Little and Co for respondents

CORAM: A.P.SHAH & S.U.KAMDAR JJ.

lst October, 2004

P.C.

Heard advocates.

2. It appears that in l989 the appellant had submitted an application to the Executive Engineer of the respondent MSEB stating therein that at Roha Sub-Division the work of Marathi and English typing was being done by one Ms Nayana Zore, now because

of her marriage is fixed, the appellant is willing to do that work. On that application an order was made that work of typing so far was being given to Ms Nayana Zore was directed to be given to the appellant and she should be paid for the said work as per the rules. It appears that thereafter the certificates were issued from time to time by the officers of the respondent MSEB certifying that the appellant is doing the work of Marathi and English typing at the Sub-Division.

3. The appellant filed a complaint under MRTP and PULP Act claiming that she is an employee of the respondent MSEB and she has been in the said employment since l989. The appellant claimed that she is working in a permanent vacancy and completed more than 240 days continuous service in the year and therefore she is entitled to permanency under the provisions of the Industrial Disputes Model Standing Orders Act. This complaint was allowed by the Industrial Court. The order of the Industrial Court was challenged by the MSEB before the learned single Judge who held that no recruitment could be

made against permanent vacancy without due advertisement and without giving persons who are qualified for the post an opportunity to apply for that post and therefore the Industrial Court was in error in granting permanency solely on the basis that the appellant has completed 240 days service in a year.

4. We have heard the learned counsel for the parties. It is now well settled that regular appointment to the post has to be made according to the statutory rules and any adhoc appointment would be only a temporary appointment dehors the rules, pending regular recruitment without conferring any right to regularisation of service. (See J and K Public Service Commission vs Dr Narinder Mohan (l994) 2 SCC 630 and Dr Surinder Singh Jamwal and anr vs. State of Jammu and Kashmir and ors, AIR l996 SC 2775). In the instant case it is not even the case of the appellant that she has been appointed against a permanent vacancy. In fact it has been brought to our notice by the learned counsel appearing of the MSEB that there is a ban

on recruitment imposed by the MERC and it is not permissible for the MSEB to make fresh recruitment. In view of this admitted position that recruitment has not been made in accordance with the provisions of the statute the learned single Judge was right in holding that the petitioner cannot claim regularisation. However, having regard to the fact that the appellant has been doing the job of typing since l989 we direct that as and when MSEB decides to fill in the post of typist - clerk (lower grade) the MSEB shall take into consideration the case of the appellant by relaxing the age limit. Appeal is disposed of accordingly. It is needless to say that respondent will continue to give the typing job to the appellant as and when it is available.